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S. DISTRICT COURT

U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 01 1999

JAMES W McCORMACK, CLERK

By: _____ DEP. CLERK

VERNICESA F. BARNES,

Plaintiff,

V.

McDONALD'S CORPORATION,

Defendant.

No. LRC 98-547

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendant McDonald's Corporation hereby moves this Court to grant summary judgment in its favor.

In support of said Motion, defendant relies upon its attached Local Rule 56.1 statement; its supporting brief, affidavits and exhibits submitted herewith and incorporated herein by reference; and any further submissions and argument of counsel as may be presented by defendant in this matter.

Dated: March 1st, 1999

Respectfully Submitted,

W. L. L. L. L.
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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

VERNICESA F. BARNES,)	
)	
Plaintiff,)	
)	
v.)	No. LRC 98-547
)	
McDONALD'S CORPORATION,)	
)	
Defendant.)	

**DEFENDANT'S LOCAL RULE 56.1 STATEMENT
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1 of the United States District Court for the Eastern District of Arkansas, McDonald's Corporation ("McDonald's") submits the following statement of facts as to which there is no genuine issue to be tried:

1. Beginning March 26, 1998, a promotional game entitled "The 1998 Monopoly Game at McDonald's" was conducted at participating McDonald's restaurants. See Affidavit of Mark Landolt ("Landolt Aff.") at ¶ 3.¹
2. Among the many prizes offered in the Monopoly Game were two cash prizes of \$200,000. See id. at ¶ 7.
3. Participants received game stamps affixed to certain McDonald's food packages.² See id. at ¶ 3.

¹ All affidavits and exhibits referenced herein are submitted in the accompanying Defendant's Evidentiary Materials In Support Of Motion For Summary Judgment, which is filed and served herewith.

² Game stamps were also available, without a McDonald's purchase, by submitting a request and a self-addressed stamped envelope to a specified address. See Landolt Aff. at ¶ 3.

4. The game stamps are of two types: “Collect to Win” stamps and “Instant Win” stamps. See id.

5. “Collect to Win” stamps indicate that other game stamps must be collected in order to win the prize identified on the stamp. See id.

6. “Instant Win” stamps do not indicate that other game stamps must be collected in order to win the prize identified on the stamp. See id.

7. Corresponding to these two types of official game stamps, there are two ways to become a potential winner: (1) collect the entire series of official “Collect to Win” stamps that constitute a complete collection section of the Monopoly game board or (2) obtain a single official “Instant Win” stamp. See id.

8. This lawsuit involves a mis-cut “Collect to Win” game stamp submitted by plaintiff -- specifically, a mis-cut “North Carolina Avenue” stamp (#819). See Exhibits 1 and 2.

9. A properly cut “North Carolina Avenue” stamp is depicted below. See Affidavit of Bobby Everett (“Everett Aff.”) at ¶ 5.



10. Ms. Barnes' mis-cut "North Carolina Avenue" stamp (#819) is depicted below and copies of Ms. Barnes' actual game stamp are submitted herewith as Exhibits 1 and 2. See id.; Landolt Aff. at ¶ 5.



11. Ms. Barnes claims that her game stamp is the "Instant Win" game stamp for the \$200,000 prize. See Complaint at ¶ 5.

12. The official \$200,000 "Instant Win" game stamp (#828) is depicted below. See Everett Aff. at ¶ 6.



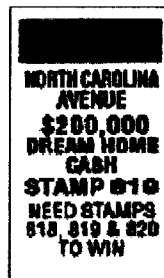
13. The game stamps for the Monopoly Game were printed in rows on large sheets, called webs, which were then cut to form individual stamps. See Everett Aff. at ¶ 2. A copy of a portion of a game stamp web is submitted herewith as Exhibit 3. See id.

14. When the game stamp submitted by Ms. Barnes was produced, the web was out of register and the individual game stamp was mis-cut. See id. at ¶¶ 3-4.

15. As a result of the mis-cutting, the top portion of Ms. Barnes' "Collect to Win" game stamp was cut off and the top portion of the "Instant Win" game stamp located directly below it on the web was included on the bottom of Ms. Barnes' game stamp. See id. at ¶ 3.

16. The pictures below demonstrate the cutting process with respect to both a properly registered and the out of register "North Carolina Avenue" game stamp (#819). See id. at ¶ 5; see also Exhibit 3 (highlighting applicable stamp combination on printing web).

PROPERLY REGISTERED



OUT OF REGISTER



17. Participants in the Monopoly Game are repeatedly advised that potential "high level" winning stamps (such as the \$200,000 prize claimed by Ms. Barnes) are not winners unless and until verified by the Redemption Center. See Exhibit 10 at ¶¶ 2, 4.

18. The Official Rules provide that “high level” winning stamps (including those for the \$200,000 prize) may be redeemed only through the Redemption Center, and state that “You are not a winner of any prize until your official game stamp(s) has been verified at the Redemption Center or a participating McDonald’s, whichever is applicable.” See Exhibit 10 at ¶ 2.

19. The same point is reiterated at ¶ 4 of the Official Rules, and again in the redemption form signed and submitted by Ms. Barnes, which emphasizes that “You are not a winner until your game materials are verified at the Redemption Center” See Exhibit 10 at ¶ 4; Exhibits 1 and 11.

20. The Official Rules also apprise participants that mis-cut game stamps are null and void, and in assigning sole responsibility for such determinations to McDonald’s and the Redemption Center:

Game materials are null and void . . . if they contain printing, typographical, mechanical or other errors. All decisions of McDonald’s and the Redemption Center are final, binding and conclusive in all matters.

See Exhibit 10 at ¶ 7.

21. The Official Rules repeat this point again in ¶ 5: “[D]ecisions of the judges . . . are final and binding in all respects.” See id. at ¶ 5.

22. Ms. Barnes expressly assented to these requirements in writing when she submitted her game stamp to the Redemption Center. See Exhibits 1 and 11.

23. She filled out and submitted a redemption form for her submission, wherein she was apprised that she is “not a winner until . . . verified at the Redemption Center.” See id.

24. She further declared that she had “read, understood, complied with and [did] accept all of the Official Rules” -- rules which repeatedly state that she is not a winner until so adjudged by the Redemption Center, whose determination is final, binding and conclusive. See id.

25. Following submission to the Redemption Center, Ms. Barnes’ entry was determined to be a mis-cut “Collect to Win” game stamp. See Landolt Aff. at ¶ 6.

26. Pursuant to the Official Rules, the Redemption Center determined that the game stamp contained printing, typographical, mechanical and/or other errors and was therefore null and void. See id.

27. On April 30, 1998, the Redemption Center sent a letter to Ms. Barnes notifying her that her game stamp was a mis-cut “Collect to Win” game stamp and was therefore null and void. See Landolt Aff. at ¶ 6; Exhibit 8.

28. Enclosed with this letter was a letter from McDonald’s and \$500 worth of McDonald’s gift certificates. See Landolt Aff. at ¶ 6; Exhibit 9.

29. The Official Rules establish that two \$200,000 prizes were available in the Monopoly Game. See Exhibit 10 (“Odds Chart”).

30. One of the \$200,000 prizes could be won by virtue of the entire series of three official “Collect to Win” game stamps for such prize and the other could be won by virtue of the official “Instant Win” game stamp for such prize. See Landolt Aff. at ¶ 7.

31. The three official game stamps in the \$200,000 “Collect to Win” series were submitted by a participant from Tempe, Arizona and the official \$200,000 “Instant Win” game stamp was submitted by a participant from North Borough, Massachusetts. See id.

32. These submissions were verified by the Redemption Center and, as is the procedure with high-level winning game stamps, were re-verified by Arthur Andersen, an independent auditing firm. See id.

33. The two \$200,000 cash prizes have been paid to these participants. See id.

Dated: March 1st, 1999

Respectfully Submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing DEFENDANT'S MOTION FOR SUMMARY JUDGMENT and DEFENDANT'S LOCAL RULE 56.1 STATEMENT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT has been mailed to Mr. Willard Proctor, Jr., 1619 South Broadway, Little Rock, Arkansas 72206 on this the 1st day of March, 1999.



W. Lee Tucker